

**Williams Ready-Mix, Inc. and Northern California  
General Teamsters Security Fund. Case 20-  
CA-24913**

March 26, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Northern California General Teamsters Security Fund (the Fund), on September 28, 1992, the General Counsel of the National Labor Relations Board issued a complaint on November 18, 1992, against Williams Ready-Mix, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 19, 1993, the General Counsel filed a Motion for Summary Judgment. On February 25, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by letter dated December 10, 1992, notified the Respondent that unless an answer was received by December 17, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation with an office and place of business in Williams, California, has been engaged in the batching and wholesale and retail sale of ready-mix concrete. During the calendar year ending December 31, 1991, the Respondent, in the course and

conduct of its business operations, derived gross revenues in excess of \$500,000. During the calendar year ending December 31, 1991, the Respondent purchased insurance valued in excess of \$2500 from an insurer which is located in the State of Maryland and which has offices or agents in various States, including the State of California. The Respondent's premium payments were forwarded to the insurer's Maryland facility. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find, as alleged in the complaint, that General Teamsters Local Union No. 137, International Brotherhood of Teamsters, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act and, as also alleged in the complaint, that the Fund is an agent of the Union within the meaning of Section 2(13) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent, the unit, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All employees performing work covered by the terms of the collective bargaining agreement between Respondent and the Union, effective from May 1, 1989 through April 30, 1992; excluding all other employees, guards and supervisors as defined in the Act.

Since at least 1983 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, based on Section 9(a) of the Act, and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period May 1, 1989, through April 30, 1992.

Since on or about April 10, 1992, and continuing to date, the Respondent, without notifying the Union or affording it an opportunity to bargain, unilaterally failed, with regard to the payments due on April 10 and May 10, 1992, to make contractually required payments to the Fund on behalf of the employees in the unit, which matter is a mandatory subject of bargaining.

**CONCLUSION OF LAW**

By unilaterally failing to make contractually required payments to the Fund on behalf of its unit employees, the Respondent has refused to bargain collectively with the Union as the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting com-

merce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to make the contractually required payments to the Fund that have not been made since April 10, 1992.<sup>1</sup> The Respondent shall also be required to make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to make the contractually required contributions to the Fund, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Williams Ready-Mix, Inc., Williams, California, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with General Teamsters Local Union No. 137, International Brotherhood of Teamsters, AFL-CIO, which is the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, by failing to make the contractually required contributions to the Northern California General Teamsters Security Fund. The appropriate bargaining unit consists of:

All employees performing work covered by the terms of the collective bargaining agreement between Respondent and the Union, effective from May 1, 1989 through April 30, 1992; excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the contributions to the Fund that have not been made since April 10, 1992.

(b) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to make the contractually required contributions

<sup>1</sup> Any additional amounts applicable to these payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

to the Fund, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Williams, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to bargain with the General Teamsters Local Union No. 137, International Brotherhood of Teamsters, AFL-CIO, which is the exclusive collective-bargaining representative of our employees in an appropriate unit, by failing to make contractually required contributions to the Northern California General Teamsters Security Fund. The appropriate unit consists of:

All employees performing work covered by the terms of the collective bargaining agreement between Williams Ready-Mix, Inc. and the Union, effective from May 1, 1989 through April 30, 1992; excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make contractually required contributions to the Fund that have not been made since April 10, 1992.

WE WILL make whole unit employees for any expenses they may have incurred as a result of our fail-

ure to make the contractually required contributions to the Fund, with interest.

WILLIAMS READY-MIX, INC.